Supreme Court, U. S.
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No. 76-831

In the Supreme Court of the United States

OCTOBER TERM, 1976

MOHAMMED MUSTAFIZUR RAHMAN, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT

DANIEL M. FRIEDMAN,
Acting Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioner, a native and citizen of Pakistan, was originally admitted to the United States as a permanent resident immigrant in 1966. In early 1967, petitioner registered under the Selective Service Act and was classified 1-A, available for military service. Following his appeal from that classification, petitioner was reclassified 1-A-O, conscientious objector available for noncombatant duty (Pet. App. 20).

On June 30, 1967, a notice directing petitioner's appearance for an Armed Forces physical examination was mailed to his correct address in Detroit, Michigan. However, petitioner departed the United States for Pakistan on July 19, 1967, two days before the sched-

uled examination, without informing the Selective Service of his departure. After remaining in Pakistan for about one year, petitioner returned to the United States on July 17, 1968 (*id.* at 20–22).

Deportation proceedings were instituted charging petitioner with having departed from and having remained outside the United States in order to avoid or evade training or service in the Armed Forces, in violation of Sections 241(a)(1) and 212(a)(22) of the Immigration and Nationality Act, 66 Stat. 204, 182, 8 U.S.C. 1251(a)(1) and 1182(a)(22). Petitioner denied the charge, but at the conclusion of the administrative hearing he was found deportable, and was granted the privilege of voluntary departure. The finding of deportability was affirmed by the Board of Immigration Appeals (Pet. App. 19–25) and by the court of appeals (Pet. App. 17–18).

On January 21, 1977, the President granted "a full, complete and unconditional pardon to * * * all persons who may have committed any offense between August 4, 1964 and March 28, 1973 in violation of the Military Selective Service Act or any rule or regulation promulgated thereunder." Pres. Proc. No. 4483, 42 Fed. Reg. 4391. In order to implement this pardon, the President issued Executive Order Number 11967, which provides in pertinent part (42 Fed. Reg. 4393–4394):

> The following actions shall be taken to facilitate Presidential Proclamation of Pardon of January 21, 1977:
>
> * * * * *

> 3. Any person who is or may be precluded from reentering the United States under 8 U.S.C. 1182(a)(22) or under any other law, by reason of having committed or apparently committed any violation of the Military Selective Service Act shall be permitted as any other alien to reenter the United States.
>
> The Attorney General is directed to exercise his discretion under 8 U.S.C. 1182(d)(5) or other applicable law to permit the reentry of such persons under the same terms and conditions as any other alien.

Because of the impact the foregoing provisions may have upon petitioner's current status, we respectfully suggest that the Court grant the petition, vacate the judgment below, and remand the case to the court of appeals with directions that that court remand the case to the Board of Immigration Appeals[1] for a prompt determination of the validity of the instant deportation order in light of the Presidential Proclamation of Pardon and the accompanying Executive Order. Counsel for petitioner has authorized us to state that he agrees with this disposition of the petition.

Respectfully submitted.

DANIEL M. FRIEDMAN,
Acting Solicitor General.

FEBRUARY 1977.

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[1]Deportation shall be stayed pending such administrative determination (and any further judicial review which may be deemed necessary). Section 106(a)(3), 75 Stat. 651, as amended, 8 U.S.C. 1105a(a)(3).

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